

In the Indiana Supreme Court

CAUSE NUMBER: 94S00-0801-MS-15

ORDER AMENDING INDIANA RULES OF TRIAL PROCEDURE AND INDIANA RULES OF APPELLATE PROCEDURE

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Indiana Rule of Trial Procedure 59 is amended to read, and Indiana Rule of Appellate Procedure 14.1 and an accompanying form are created to read, as follows (deletions shown by ~~striking~~ and new text shown by underlining):

INDIANA RULES OF TRIAL PROCEDURE

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Rule 59. Motion to correct error

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(K) Orders regarding services, programs, or placement of children alleged to be delinquents or alleged to be in need of services. No motion to correct error is allowed concerning orders or decrees issued pursuant to Indiana Code sections 31-34-4-7(e), 31-34-19-6.1(e), 31-37-5-8(f), or 31-37-18-9(b). Appeals of such orders and decrees shall proceed as prescribed by Indiana Appellate Rule 14.1.

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INDIANA RULES OF APPELLATE PROCEDURE

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Rule 14.1. Expedited Appeal for Payment of Placement and/or Services

A. Applicability. This Rule governs appellate review per Indiana Code sections 31-34-4-7(f), 31-34-19-6.1(f), 31-37-5-8(g), and 31-37-18-9(d). All other appeals concerning children alleged to be in need of service or children alleged to be delinquent are not covered by this rule.

B. Notice of Expedited Appeal.

1. The Department of Child Services (“DCS”) shall file a Notice of Expedited Appeal with the trial court clerk within five (5) business days after the court’s order of placement and/or services. (See Form #App.R. 14.1-1.)

2. On the same day DCS files the Notice of Expedited Appeal, it shall serve the Notice on the trial court judge, the court clerk, county commissioners, the guardian ad litem, CASA, any juvenile who is the subject of the order if 14 years of age or older, counsel for the juvenile, the parents of the juvenile, the Attorney General, in the case of a juvenile delinquency matter the Chief Probation Officer and Prosecutor, and any other party of record.

3. The Notice of Expedited Appeal, in a form proscribed by this rule, shall designate the order from which the appeal is taken and any Transcript that is to be provided.

4. The certificate of service attached to the Notice of Expedited Appeal shall include (a) the name and address, and (b) the FAX number and e-mail address if known, of every person to whom it was sent.

5. Any party who has received the Notice of Expedited Appeal shall have five (5) business days from service of the Notice of Expedited Appeal to file an Appearance and request any additional other items to be included in the record. Failure to file an Appearance shall remove that party from the Appeal.

6. The trial court shall be considered a party to the Appeal if it files a timely appearance.

C. Transcript and Record.

1. The completion of the Transcript and the Record on Appeal shall take priority over all other appeal transcripts and records. Within ten (10) business days after the filing of the Notice of Appeal, the assembly of the Clerk’s Record shall be completed and any requested transcript shall be prepared and filed, after which the clerk shall immediately issue and file a Notice of Completion of Clerk’s Record (and a separate Notice of Completion of Transcript if assembly of the Clerk’s Record is completed before the transcript is filed) and shall immediately serve all parties to the Appeal by both: (i) U.S. mail or third-party commercial carrier; and (ii) personal service, electronic mail, or facsimile.

2. The Clerk’s Record in appeals governed by this rule shall contain the pre-dispositional report and any attachments thereto, in addition to the other records listed in Appellate Rule

2(E). The trial court clerk is not obligated to index or marginally annotate the Clerk's Record, which shall be the responsibility of DCS.

3. On the eleventh (11th) business day following the filing of the transcript, the trial court clerk shall transmit the transcript to the Clerk without any further notice from the Clerk. Failure to meet this deadline shall require the trial court clerk to show cause to the Court on Appeal why he or she should not be held in contempt. DCS may, but is not required to, file a show cause motion with the Court on Appeal concerning the trial court clerk's failure to meet this deadline.

D. Memoranda.

1. Any party on Appeal may file a memorandum, which may be in narrative form and need not contain the sections under separate headings listed in Appellate Rule 46(a).

2. Memoranda shall not exceed ten (10) pages unless limited to 4,200 words and shall adhere to the requirements of Appellate Rules 43(A)-(G), (J), and (K). Memoranda exceeding ten (10) pages in length shall contain the word count certification required by Appellate Rule 44(F). Any factual statement shall be supported by a citation to a page where it appears in the record.

3. DCS shall have five (5) business days from the filing of the Notice of Completion of Transcript (or the Notice of Completion of Clerk's Record if a transcript was not requested) to file a memorandum stating why the trial court's decision should be reversed. DCS's memorandum shall be accompanied by an Appendix that shall contain copies of all relevant pleadings, motions, orders, entries, and other papers filed, tendered for filing, or entered by the trial court, including but not limited to the pre-dispositional report and all attachments thereto.

4. Any responding party shall have five (5) business days after DCS has filed its memorandum to file a responsive memorandum stating why the decision should be sustained or reversed, and to file any accompanying supplemental Appendix.

5. No reply memorandum shall be allowed.

6. A party shall file its original Memorandum and eight (8) copies.

E. Extensions of Time. Extensions of time are not allowed.

F. Rehearing on Appeal. A party may not seek rehearing of an appellate decision issued under this rule.

G. Outcome of Appeal. If DCS prevails on appeal, payment shall be made in accordance with Indiana Code sections 31-34-4-7(g), 31-34-19-6.1(g), 31-37-5-8(h), or 31-37-18-9(e), as the case may be.

H. Petition to Transfer. A Petition to Transfer must be filed no later than five (5) business days after the adverse decision of the Court of Appeals. A party who files a Petition to Transfer by mail or third-party commercial carrier shall also contemporaneously tender a

copy to the Clerk's Office via facsimile. The Petition to Transfer shall adhere to the requirements of Appellate Rules 43(A)-(G), (J), and (K). Appellate Rules 43(H) and (I), 44, and 57 shall not apply. The Petition to Transfer shall not exceed one (1) page in length, excluding the signature block and certificate of service, and shall notify the Supreme Court simply of the party's desire for the Supreme Court to assume jurisdiction over the appeal following the adverse decision of the Court of Appeals. A file-stamped copy of the Court of Appeals' opinion or memorandum decision shall be attached to the Petition to Transfer. No brief in response shall be allowed. The Supreme Court will consider the merits of the Petition to Transfer based on the party's filings submitted to the Court of Appeals and on the Court of Appeals' opinion or memorandum decision.

I. **Certification of Opinion.** The Clerk shall certify the Court of Appeals' opinion or memorandum decision six (6) business days after it is handed down unless a timely Petition to Transfer has been filed and served in accordance with the preceding section. The Clerk shall certify any opinion of the Supreme Court immediately upon issuance.

J. **Service.** Service, if by mail or third-party commercial carrier, shall also be by contemporaneous fax or email on all parties whose FAX number or e-mail address is known by the serving party. Parties who are served by contemporaneous FAX or e-mail shall not be entitled to the extension of time set forth in Appellate Rule 25(C). Any party filing an appearance after documents have been served shall promptly be served with all documents not previously provided to the later-appearing party.

Form App. R. 14.1-1. Notice of Expedited Appeal

STATE OF INDIANA _____) IN THE [insert name of trial court]
_____) SS:
COUNTY OF _____) CASE NO. [insert trial court number]

In the Matter of _____ ,)
a Child Alleged to be a Child)
in Need of Services _____)
_____)
Department of Child Services, _____)
Petitioner _____)

or

In the Matter of _____)
a Child Alleged to be a Delinquent)
Child _____)
_____)
Department of Child Services, _____)
Petitioner _____)

Notice of Expedited Appeal Regarding Juvenile Placement and/or Services

The Department of Child Services, [by counsel], pursuant to Ind. Appellate Rule 14.1, respectfully gives notice of an expedited appeal from the following judgment(s) or order(s) entered by the [insert the name of the court]: [list title(s) and date(s) of appealed judgment(s) or order(s).]

The clerk of [insert name of trial court] is requested to assemble the Clerk's Record, as defined by Ind. Appellate Rule 2(E) and which must include the pre-dispositional report. The Clerk's Record must be assembled and filed within ten (10) business days of the filing of this Notice of Expedited Appeal, and no extensions of time are allowed. See Ind. Appellate Rule 14.1(C)(1) & E.

The court reporter of the [insert name of the court] is requested to transcribe, certify, and file with the clerk of the [insert name of trial court], on or before the date the clerk's record is due to be assembled, the following hearings of record, including exhibits: [designate requested portions of the transcript]

Respectfully submitted,

[Insert Name of Attorney or pro se party]
Address
Telephone number
Facsimile Number
E-mail address

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon the following by [indicate method of service], this _____ day of _____, 20__ :
[insert list of parties served, including name and address, and, if known, FAX number and e-mail address, as required by Appellate Rule 14.1(B)(4)]

[Insert name of Attorney or pro se party]

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These amendments shall take effect on January 1, 2009.

The Clerk of this Court is directed to forward a copy of this Order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and Thomson/West.

Thomson/West is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this _____ day of December, 2008.

Randall T. Shepard
Chief Justice of Indiana

All Justices concur.